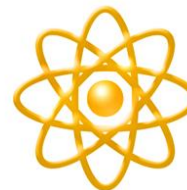




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# **Differing Professional Opinions**

**James McConnell**  
**Carol Sohn**  
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# Presentation Overview



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- Differing Professional Opinions process for nuclear safety
- Lessons learned from Challenger/Columbia accident relative to differing professional opinions
- Evolution of the employee concerns program
- Attributes of a good ECP Manager; what attributes have you found work well?
- What is a whistleblower?
- Attributes of a whistleblower
- Senior manager techniques to minimize DPOs, employee concerns and whistleblower cases and promote informal resolution
- DPO/employee concern/whistleblower scenario(s) for decision makers
- Questions/discussions

# Learning Objectives



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- Describe the differing professional opinions process for issues involving nuclear safety
- Identify the benefits of the Employee Concerns program
- Define what is a whistleblower
- Identify the benefits of the Employee Concerns program
- Demonstrate techniques to mitigate employees concerns/whistleblower concerns for a specific scenario

# Differing Professional Opinions Process for Nuclear Safety



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- **DOE P 442.1 Differing Professional Opinions on Technical Issues**
  - Establishes the differing professional opinion (**DPO**) policy
  - Ensures that managers encourage employees to freely communicate ES&H concerns and **DPOs**;
  - Ensures that employees feel free to raise issues without fear of retaliation or reprisals;
  - Ensure that issues related to ES&H are raised and addressed in a timely manner and that activities that might result in an undue risk are curtailed or suspended as appropriate under the proper authority; and
  - Supplements the Department of Energy (DOE) Employee Concerns Program mandated by providing a specific process for assessing and addressing technical issues related to ES&H.

# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **DOE M 442.1-1 Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety, and Health**
  - Establishes a Department of Energy (DOE) Differing Professional Opinion (**DPO**)
  - Not intended to circumvent other avenues for resolving technical disagreements but rather to supplement existing processes.
  - Process supplements the DOE Employee Concerns Program established in DOE O 442.1A, Department of Energy Employee Concerns Program, by providing a specific process for assessing and addressing technical issues related to ES&H.

# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Responsibilities**

- CTA (nuclear safety), Under Secretary (non-nuclear safety)
  - Within 10 working days of acceptance of the **DPO**, assign appropriate senior manager to be responsible for the Final Decision on a **DPO**. Where practicable, the individual assigned responsibility for the Final Decision should be at a level above or independent from the manager who made the contested decision.
  - Approve any extensions of the review period for **DPOs** beyond the initial 30 calendar day extension.
  - Make decisions on any appeals to **DPO** Final Decisions.
  - Stop or curtail work as necessary to ensure that a facility or activity is in a safe condition until **DPO** issues have been resolved.
  - Provide annual notice to all employees of the availability of the process and encourage its use where appropriate.

# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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## – Chief, Health, Safety and Security Officer, Office of Health, Safety and Security

- Assigns an HS DPOM for offices other than NNSA.
- Maintains the **DPO** Policy and Manual.
- Performs a sample review of **DPOs** biennially from the list provided by the DPOMs.
- From the review, assesses the success of the **DPO** Process and the follow-up actions.
- Provides to the Deputy Secretary and each of the Under Secretaries a report on the findings of the assessment, including any pertinent recommendations to address findings or deficiencies.

# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Secretarial Officer, Deputy Administrator, CDNS, CNS, FOM or Other Senior Manager Assigned Responsibility**
  - Within 10 working days of being assigned a **DPO**, appoints an ad hoc panel of independent experts to review the **DPO** issue and provide recommendations and assigns the chair for the panel.
  - Provides technical assistance and/or support to the ad hoc panels, when needed.
  - Reviews reports from ad hoc panels.
  - Makes and documents the Final Decision within 10 working days of receiving an ad hoc panel report, including the appropriate actions to take on assigned **DPOs**, including the bases for the Final Decision.
  - Sends copies of the Final Decision to submitter, the submitter's management, the appropriate DPOM (or both DPOMs), ad hoc panel members, and any individuals or organizations tasked with followup actions or implementation.



# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Secretarial Officer, Deputy Administrator, CDNS, CNS, FOM or Other Senior Manager Assigned Responsibility (Cont.)**
  - Approves extensions to review periods for up to 30 calendar days and requests additional extensions
  - Maintains records on **DPOs** until decisions have been documented then sends records to the appropriate DPOM (or both DPOMs) for record keeping and followup.
  - Meets with employees who are not satisfied with **DPO** decisions within 10 working days of the request to meet, and attempts to resolve issues before the Final Decision is appealed.
  - Where authorized, stops or curtails work as necessary to ensure that facilities and/or activities are in a safe condition until **DPO** issues have been resolved; where not authorized, informs the appropriate management level that work may need to be stopped or curtailed.
  - Notifies contracting officers of contracts affected by the requirements of this directive that the CRD will be included in the affected contracts.

# Differing Professional Opinions Process for Nuclear Safety (Cont.)



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## – All DOE Managers

- Encourage employees to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical issues related to ES&H, unless the disclosure is specifically prohibited by law.
- Ensure that the views of all persons involved in the process are respected.
- Protect employees from retaliation in any form for reporting **DPOs**.
- Report to the appropriate DPOM when requested on the status of assigned implementation actions resulting from the **DPO** resolution and on the closure of these implementation actions.



## Lessons Learned from Challenger/Columbia Accident

- Well-intentioned people and high-risk organizations can become desensitized to deviations from standards.
- Past successes may be the first step toward future failure.
- Organizations, like people, must always be learning, especially from past mistakes.
- Poor organizational structure can be just as dangerous to a system as technical, logistical, or operational factors.
- Leadership training and system safety training are wise investments in an organization's current and future health.

# Lessons Learned from Challenger/Columbia Accident



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- Leaders must ensure external influences do not result in unsound program decisions.
- **Leaders must demand minority opinions and healthy pessimism.**
- Stick to the basics.
- High-reliability organization safety programs cannot remain silent or on the sidelines – must be visible, critical, empowered, and fully engaged.
- Safety efforts must focus on preventing versus solving mishaps.



# Evolution of the Employee Concerns Program

- Whistleblower Protection Act (1989)
- DOE Order 5480.29 – Employee Concerns management system (1993)
- Alternative Dispute resolution (1996)
- Ombudsman program 1 CFR 305 (Use of Ombudsmen by Federal Agencies)
- Evolution of 10CFR708 (1999 and 2000) - DOE Employee Concerns Program
- DOE Order 442.1 (1999)
- DOE Order 442.1A (2001)

# Attributes of a good ECP Manager



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- Patience
- Good listener
- Knowledge about people and the Department
- Knowledge of “triage mechanisms” and categorization
- Solution orientation

# What is a whistleblower?



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- Any person who makes a disclosure about improper conduct by public bodies and public officers under the Whistleblowers Protection Act 2001
- Person filing complaint of discrimination or retaliation will be required to show engagement in a protected activity, employer knew about the activity, employer subjected him/her to adverse employment action and protected activity contributed to the adverse action
  - Discrimination
  - Adverse employment action
  - Protected activity



- DPO Module – December 2008



# Techniques to Minimize DPOs, Employee Concerns, Whistleblower Cases and Promote Informal Resolution



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- Be aware of Employee concerns program
- Work issues at the lowest level
- Site managers being open and taking some personal involvement
- Have a strong ECP manager
- Don't let problems linger
- Be able to screen the big issues versus insignificant



# DPO/Employee Concern/Whistleblower Scenario(s)

- Scenario
  - Facility determined to be non-compliant with 10CFR830, subpart B—safety basis was never developed but exceeds Hazard Category 2 thresholds
  - Facility is in surveillance and maintenance mode, most source term is below ground in pits
  - Contractor has opportunity to remove small quantities of materials in containers (above grade) to reduce the available and dispersible source term—DOE would require activity based analysis and DOE approval for this work to proceed
  - Development, approval and implementation of compliant safety basis will take approximately one year
  - Time A: Employee #1 writes down issue over potential removal of above grade material not allowed since safety basis is non-compliant and submits to site office manager

# DPO/Employee Concern/Whistleblower Scenario(s)



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- Scenario
  - Time B: Employee #2 (not involved with review of document) expresses issue formally to Site Office Manager—issue is encompassed by Employee #1's issues
  - Time C: Employee #1 revises issue and includes new thoughts
  - Time D: Employee #2 writes letter to Congress with issue
- Questions
  - What actions would you or your office take at each point?

# Questions and Discussion



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